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April 16, 2018

John J. Conforti, Esq.
Scott E. Sakowski, Esq.
Attorney General – Department of Justice
33 Capitol Street
Concord, NH 03301

**Re: Jennifer P, individually and as p/n/f of Jay P. v. Spaulding Youth Center and
NH Division of Children, Youth and Families
Case No. 216-2015-CV-00520**

Dear Attorney's Conforti and Sakowski:

Enclosed please find the Settlement Agreement executed by Jennifer P [REDACTED] individually and as p/n/f of Jay P. and Neil B. Nicholson as Guardian over the Estate of Jay P. (for litigation purposes only.) Please return a signed original signature page to us. We will move to have this approved by the court.

With best regards, I am

Very truly yours,

Scott H. Harris

SHH:awl

Enclosure

cc: Andrew Hamilton
Peter E. Hutchins, Esq.
Mary Tenn, Esq.
Neil Nicholson, Esq.
Jennifer P [REDACTED]

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“Agreement”) is entered into between Jennifer P., Individually and as parent and next friend of J.P., acting through Neil Nicholson, Esq. as the Guardian of J.P.’s Estate for the purposes of this case, their heirs, successors, assigns, administrators and attorneys (collectively referred to as “Plaintiffs”) and the State of New Hampshire, acting through its Department of Health and Human Services, Division for Children Youth and Families (hereinafter referred to as “State”). Plaintiffs and the State are collectively referred to as the “Parties.”

RECITALS

WHEREAS, Plaintiffs filed an action against several parties, including the State, relative to an allegation of physical abuse against J.P. while in foster care in 2014 in an action entitled Jennifer P. individually and as p/n/f of J.P. v. Spaulding Youth Center, et al., Hillsborough County Superior Court, Northern District, Docket No. 216-2015-CV-00520 (“the Litigation”);

WHEREAS, the State denies all liability or any wrongdoing of any kind in relation to the Plaintiffs’ allegations in the Litigation;

WHEREAS, the Parties wish to fully resolve the Plaintiffs’ allegations against the State in the Litigation and avoid further litigation of these issues between the Parties. The Plaintiffs reserve all rights of recovery against other defendants, including but not limited to Spaulding Youth Center and CASA;

NOW THEREFORE, in consideration of the terms and conditions contained herein, Plaintiffs acknowledge and agree to the following:

1. **General Release of All Claims.** Plaintiffs on their own behalf, and for their executors, administrators, beneficiaries, or assigns, hereby fully remise, release and forever

discharge the State and all its officers, representatives, employees, agencies, agents, departments, committees, commissions, servants, volunteers, officials, directors, attorneys, successors and assigns, in their individual, business, and official capacities (collectively referred to as "Releasees"), from any and all debts, demands, causes of actions, suits, accounts, covenants, contracts, agreements, damages, costs including without limitation, attorneys' fees and any and all claims demands and liabilities whatsoever of every name and nature, both in law and in equity, with Plaintiffs now have or ever had from the beginning of the world until the date of this Agreement against the Releasees relating in any manner to the Plaintiffs' allegations in the Litigation and the foster care of J.P.

The parties agree and acknowledged that the Plaintiffs reserve all rights of recovery against other defendants or potential defendants, including but not limited to Spaulding Youth Center and CASA and all of their respective officers, representatives, employees, agencies, agents, departments, committees, servants volunteers, officials, directors successor and assigns in their individual, business and corporate capacities; and the parties further acknowledge and agree that all such rights of recoveries and claims are specifically excluded from this Release and have not been released in anyway.

2. **Non-Admission.** Nothing in this Agreement or the furnishing of the consideration for this Agreement shall be deemed or construed for any purpose as an admission by the State of any liability, wrongdoing, or unlawful conduct of any kind.

3. **End Litigation and Withdraw Lawsuit.** Plaintiff agrees to end the Litigation against the State, by filing a petition to Approve the Settlement and a proposed Docket Marking Agreement dismissing the State from the Litigation.

4. **Consideration.** The following consideration will be provided to Plaintiff following execution of this Agreement.

The State agrees that in consideration of this Agreement, it shall cause to be paid a settlement sum of Four Hundred and Seventy Five Thousand Dollars (\$475,000) to Plaintiffs by check made payable to "The Law offices of Peter E. Hutchins, PLLC as attorney for Jennifer P., Individually and as parent and next friend of J.P."'"

The State agrees to waive the recovery of all Medicare or Medicaid liens relating to treatment for J.P.'s injuries which arose out of the incident on October 22, 2014 which is the subject of the Litigation. Such waiver shall extend to any future treatment that is directly related to the injuries sustained by J.P. on October 22, 2014 as set forth in the Litigation.

5. **Responsibility and Indemnification with respect to Tax Treatment.** Plaintiffs acknowledge and agree that should the consideration set forth above, or any part thereof, be subject to any taxes, penalties, or interest, Plaintiffs shall be solely responsible for payment of all such taxes, penalties, or interest. Plaintiffs further agree to fully indemnify and defend the State from any claims of any nature seeking recovery of any such taxes, penalties, or interest.

6. **Responsibility and Indemnification with Respect to Related Bills and Liens .**

To the extent not addressed in the Medicare or Medicaid Lien Waiver set forth in Paragraph 4, Plaintiffs acknowledge and agree to be responsible for any and all related outstanding bills, liens, statements, rights of subrogation, or reimbursement for services rendered or payments made by any third party to Plaintiffs, if any, including but not limited to legal, insurance providers, hospitals, medical and health care providers, workers compensation, or any other services or payments made or received, as a result of the claims set forth in the Litigation. In the event that any such third party asserts any claim against any of the Releasees for outstanding bills, liens, statements, rights of subrogation, or reimbursement for services rendered or payments made to Plaintiffs by such third party, then Plaintiffs agree to indemnify, defend and hold harmless the Releasees for any such claims.

7. **Protection From Third-Party Contribution Claims.** Plaintiffs agree that this settlement is reasonable and that the release is provided in good faith within the language and meaning of RSA 507:7-h.

8. **Waiver/Purpose/Representations.** Plaintiffs agrees that (a) no party is a prevailing party in the Litigation; (b) Plaintiffs are not entitled to request or be awarded attorneys' fees, interest or costs under any Federal, State, or administrative law or regulation; (c) Plaintiffs waive any such claims of attorneys' fees, interest and costs; (d) the purpose of this Agreement is to "buy peace" from further dispute and controversy between and among Plaintiffs and Releasees; (e) the consideration herein may or may not fully compensate Plaintiffs for alleged losses; (f) Plaintiffs represent that they have not assigned or transferred, to any person or entity, any claims released by him under this agreement; (g) Plaintiffs have executed this Agreement with full knowledge of its legal significance; and (h) Plaintiffs have done so to end all Claims and the Litigation against the State.

9. **Disclosure.** Plaintiffs acknowledge and agree that this Agreement may be made available, if required by N.H. RSA 91-A:4 (VI), unless otherwise ordered confidential by a Court of competent jurisdiction.

10. **Consultation with Counsel.** In executing this Agreement, Plaintiffs acknowledge that they have been advised to, and have consulted with counsel, and that they executed this Agreement knowingly, voluntarily and without undue influence or duress.

11. **Governing Law.** This Agreement shall be enforced in accordance with the laws of the State of New Hampshire. The Parties agree that exclusive jurisdiction shall be the Superior Court in the State of New Hampshire. In the event of litigation regarding this Agreement, Plaintiffs expressly submit to the jurisdiction of New Hampshire.

12. **Severability.** Plaintiffs agree that if any provision of this document is deemed invalid or unenforceable, any such provision shall be divisible and shall not affect in any way the remainder of this document, which shall remain in full force and effect.

13. **Costs.** Other than as provided in Paragraph 4, the Parties will each bear their own costs, attorneys' fees and other fees incurred in connection with this Agreement and in the matter.

14. **Interpretation.** The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the Parties. This Agreement has been negotiated by and between the Parties and shall not be construed against the "drafter" of the Agreement.

15. **Entire Agreement.** This Agreement sets forth the entire Agreement between the parties as to the subject matter herein, and fully supersedes any prior obligation of the State to the Plaintiffs and/or the Plaintiffs to the State. The Plaintiffs and the State acknowledge that they have not relied on any representations, promises, or agreements of any kind made to one another in connection with their decision to accept this Agreement, except for those set forth in this Agreement.

16. **Counterparts.** This Agreement may be executed and delivered (a) in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument, and/or (b) by facsimile and/or electronically, in which case (i) the instrument so executed and delivered shall be binding and effective for all purposes, and (ii) the Parties shall nevertheless exchange substitute hard copies of such facsimile and/or electronic instruments as soon thereafter as practicable (but the failure to do so shall not affect the validity of the instruments executed and delivered by facsimile or electronically).

Jennifer P.

Jennifer P., Individually and



Next Friend of J.P.

3/29/16

Date

On Behalf of J.P.

Date

Duly Authorized

Name:

Position:

[Signature]

State of New Hampshire

Department of Health and Human Services

Duly Authorized

Name: *Gordon MacDonald*
Position: *Attorney General*

4/6/16

Date

Jennifer P., Individually and As Parent and Next Friend of J.P.

Date


On Behalf of J.P.

Duly Authorized

Name: *NEIL B. NICHOLSON*

Position: *Guardian over Estate for
Litigation purposes only*

4/10/18

Date

State of New Hampshire
Department of Health and Human Services

Date

Duly Authorized

Name:

Position: